

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

KOTY HOLMES, #1463248,

Plaintiff,

v.

LORIE DAVIS, et al.,

Defendants.

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Case No. 6:20-cv-326-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Koty Holmes, proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636.

On January 26, 2021, Judge Mitchell issued a Report and Recommendation recommending that the Court dismiss this case without prejudice for want of prosecution and failure to obey a Court order. Docket No. 26. After granting Plaintiff several extensions of time to file an amended complaint, the Court ordered Plaintiff to file an amended complaint within thirty days of receiving the Court's November 19, 2020 Order, with no further extensions of time to be considered. Docket No. 24. Plaintiff received that Order on December 3, 2020. Docket No. 25. Plaintiff failed to file by the January 4, 2021 deadline, leading to Judge Mitchell's recommendation of dismissal.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff timely objected to the Report. Docket No. 27. In his objections, Plaintiff asserted that he presented his amended complaint to the Coffield Unit mailroom on or before December 4, 2020. *Id.* Plaintiff also stated that his amended complaint—which the Court still has not received—pertains to his religious claim.¹ In his objections, Plaintiff included an unsworn affidavit, punishable under penalty of perjury, declaring that he submitted his amended complaint to the Coffield Unit mailroom before December 4, 2020. *Id.* at 2.


In light of Plaintiff’s 28 U.S.C. § 1746 unsworn declaration, Judge Mitchell asked the Office of the Attorney General to provide the Coffield Unit’s outgoing legal mailroom logs from November 30, 2020, to December 5, 2020. Docket No. 28. Judge Mitchell also requested an affidavit from the Coffield Unit mailroom supervisor explaining how long it takes mailroom personnel to log letters delivered to the mailroom by inmates. *Id.*

¹ The Court severed Plaintiff’s religious claim from his 42 U.S.C. § 1983 contaminated water claim on June 18, 2020. Docket No. 3; *see also Holmes v. Davis*, Case No. 6:20-cv-333 (E.D. Tex.). This case now relates only to Plaintiff’s contaminated water claim.

The Office of the Attorney General provided the Coffield Unit mailroom logs, which reflect mail that was received in the mailroom from inmates from November 30, 2020, to December 7, 2020. Docket No. 33 at 4–21. However, the logs do not show any mail received from Plaintiff. Further, according to the affidavit of J. Alexander, Administrative Assistant IV, Mailroom, mailroom staff have two days to process, log, and deliver all legal mail. Docket No. 33 at 2. The Court reasonably concludes that Plaintiff did not submit an amended complaint by December 4, 2020.

Having conducted a de novo review of the record in this case and the Magistrate Judge's Report, the Court has determined that the Report of the Magistrate Judge is correct, and Plaintiff's objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 26) as the opinion of the District Court. Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE** for want of prosecution and failure to obey a Court order.

So **ORDERED** and **SIGNED** this **25th** day of **March, 2021**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE